

DETAILED ACTION

Claims 3, 5, 8, 10-11, 13, 15, 18-20 are pending in this Application.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 22 July 2011 has been entered.
2. Any rejections and/or objections made in the previous Office Action and not repeated below, are hereby withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. References previously cited are provided in a previous Office Action. References not previously cited are found per the attached PTO-892 for this Office Action.
4. A reply to the Applicants' arguments is presented after addressing the Claims.
- 5.
- 6.

Claim Rejections - 35 USC § 102/103

Claim 3 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over *Karr Hunt et al.* (US 2,060,733), as evidenced by *Bourgeois et al.* (EP 0 591054).

Karr Hunt et al. (col 2-3 lines 33-50 and 1-6 respectively) disclose carbamate materials added to compositions; the genus is presented in Figure 1 below:



where X₁ and X₂ are oxygen or sulfur, R₁ is a monovalent hydrocarbon radical, and R₂ and R₃ are hydrogen or monovalent organic (especially hydrocarbon) radicals. R₁, R₂, and R₃, for example, may be such general types of hydrocarbon radicals as alkyl, alkenyl, aryl, aralkyl, cycloalkyl, etc., or such particular hydrocarbon radicals as methyl, ethyl, propyl, i-butyl, amyl, decyl, dodecyl, octadecyl, phenyl, tolyl, xylyl, naphthyl, benzyl, cinnamyl, 9,10-octadecenyl, cyclohexyl, naphthenyl, etc.

Figure 1. Genus of *Karr Hunt et al.* X is Oxygen or Sulfur.

The genus indicates a trend of R₁, R₂, and R₃, materials comprising linear or branched alkanes from C₁ to C₁₈, phenyl, tolyl, or benzyl; X is Oxygen or sulfur.

As the fragrance ingredient is met, the reference discloses or inherently discloses all the property limitations of the applicable Claim when X is Oxygen.

Karr Hunt et al. further discloses placement of the material, with inherent properties, into cellulose materials in order to prevent ultraviolet light {UV} degradation (page 1 col 1 lines 44-49 and col 2 lines 24-50). This process is inherently applicable to performing a fragrancing application as evidenced by *Bourgeois et al.* (DERWENT ABSTRACT).

In the alternative:

As the reference discloses a method for adding carbamate material to a composition and as the reference's materials are members within the Claim 3 genus, it would be expected that the inherent fragrant properties of the materials provide for the property limitations indicated for Claims 3.

Further, the reference teaches a genus which places a claimed species in the possession of the public as in *In re Schaumann*, 572 F2d 312, 197 USPQ 5 (CCPA 1978), and [the] species would have been obvious even if the genus were not sufficiently small to justify a rejection under 35 USC 102. See MPEP § § 2131.02 and 2144.08 for more information on anticipation and obviousness of species by a disclosure of a genus.

7. **Examiner note:**

For the rejections of this Office Action: The Examiner recognizes that all of the claimed physical properties are not positively taught by the reference, namely a material's descriptive odor or fragrance note for all of the materials employed or disclosed. However, the reference renders all of the claimed ingredients, in the claimed amounts, process steps, and/or process conditions, and the reference discloses the composition disclosed or taught to be made in substantially the same way as Applicant's original specification or Claims. Therefore, the claimed physical properties would inherently be achieved by the composition as claimed and rendered obvious or anticipated. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the

Examiner's position that the Application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and/or process conditions for all of the Claim-encompassed, compositional amounts claimed.

Claim Rejections - 35 USC § 103

8. **Claims 3, 5, 8, 10, 13, 13, 15 18, 19 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Zander et al. (WO/0194438 per English machine translation)*.
9. The compositions are indicated to be made and further indicated to be employed for applications including cosmetic materials and for dishwashing liquids (page 27 of 31, 1st paragraph).
10. **As to Claims 3, 5 and 10 and 11 and 20:**
11. The reference teaches of making urethane with a fragrance component that comprises a fragrant alcohol (translated Description, page 27 of 31 paragraphs 3-8) on monoisocyanates employing the formula of Figure A below:

In particular, the invention relates to a compound obtained by reacting a containing at least one free isocyanate group of organic compound with an odor of alcohol R'OH under normal conditions for the formation of carbamate groups-NHC (= O)-OR'.

The free isocyanate group-containing organic compound is selected from the group consisting of mono-, di- and triisocyanates and polyurethane scaffolds.

In one embodiment, the invention relates to a compound of formula $R [NH-C (= O)-OR']^n$ where $n = 1, 2$ or 3 and R are derived from aliphatic, alicyclic or aromatic mono-, di- or triisocyanates with 1 to 30 carbon atoms.

The aliphatic and alicyclic isocyanates preferably contain 1 to 18 and particularly preferably 6 to 12 carbon atoms. The aromatic isocyanates preferably contain at least 5, more preferably at least 6 and preferably at most 16 carbon atoms.

12. Figure A. Formula and moieties for carbamate fragrances.
13. A finite number of alcohols employed are indicated in the reference (page 28 of 31 1st full paragraph).
- 14.
15. The reference is silent towards including a N,N substituted composition.
16. On the other hand, Zander et al. teach a similar urethane carbamates; the difference between the compounds taught by Zander et al. and the instant Claims is that Zander et al. teach compounds having a having a hydrogen on nitrogen, while the instant compounds have a methyl group. However, the instant Claims are rendered obvious in view of the compounds (and process) taught by Zander et al. et al since it has long been held that substitution or placement of a methyl for hydrogen on a known compound is not a patentable modification absent unexpected or unobvious results. In re Lincoln, 126 USPQ 477, 53 USPQ 40 (CCPA 1942).
17. In the instant case, the compounds taught by Zander et al. have odiferous properties, and a person having ordinary skill in the art would reasonably expect a methyl-substituted derivative of a compound taught by Zander et al. would also possess odiferous properties.
- 18.
19. Therefore, in the present case; when Zander et al. formula comprises R[-NHC(O)-OR']_n with n being 1; and when a methyl is substituted for the hydrogen in the composition, the following applies:

20. When R is a C1 carbon, a methyl group is joined at the single nitrogen of the formula along with the substituted methyl; and when the alcohol employed is a cis-3-hexenyl alcohol {alcohol OH group taken as being in the 1 position}, a material in Claim 3 genus is identified **{addressing Claims 3 and Claims 8 and 20 in part}**.

21. When R is a C3 isopropyl carbon moiety, an isopropyl group is joined at the single nitrogen of the formula along with the substituted methyl; and when the alcohol employed is a cis-3-hexenyl alcohol, a material in the instant Claim 5 genus and the instant Claim 10 genus is identified **{addressing Claims 5 and 10}**.

22. When R is a C1 isopropyl carbon, a methyl group is joined at the single nitrogen of the formula along with the substituted methyl; and when the alcohol employed is a 4-(1,1-dimethylethyl)-cyclohexanol, a material in the instant Claim 11 genus is identified **{addressing Claim 11}**.

23. **Further as to Claims 13, 15, 18-19 and further to Claims 8 and 20:**

24. As indicated above, the compositions are indicated to be made and further indicated to be employed for applications including cosmetic materials and for dishwashing liquids (page 27 of 31, 1st paragraph) **{addressing Claims 8, 13, 15 18, 19 and Claim 20}**.

25. **In addition:**

The Examiner recognizes that all of the claimed physical properties are not positively taught by the references provided below, namely a material's descriptive odor or fragrance note for all of the materials employed or taught. However, the reference renders all of the claimed ingredients, in the claimed amounts, process steps, and/or

process conditions, and the reference discloses the composition disclosed or taught to be made in substantially the same way as Applicant's original specification or Claims. Therefore, the claimed physical properties would inherently be achieved by the composition as claimed and rendered obvious or anticipated. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Examiner's position that the Application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and/or process conditions for all of the Claim-encompassed, compositional amounts claimed.

26.

27. It would have been obvious to one of ordinary skill in the art at the time of the invention to have added a methyl group to the N-carbamates taught by Zander et al. for the same or similar application employing similar materials, with a reasonable expectation of success.

28.

Claim 5 is rejected under 35 U.S.C. 103(a) as being obvious over *Karr Hunt et al.* (US 2060733) as evidenced by *Bourgeois et al.* (EP 0 591054) as applied to Claim 3 above.

Karr Hunt et al. (col 2-3 lines 33-50) disclose carbamate materials added to compositions; the genus is presented in Figure 1 above.

The genus indicates a trend of R1, R2, and R3, materials comprising linear or branched alkanes from C1 to C18, phenyl, tolyl, or benzyl; X is oxygen or sulfur.

Karr Hunt et al. further discloses placement of the material, with inherent properties, into cellulose materials in order to prevent ultraviolet light {UV} degradation (page 1 col 1 lines 44-49 and col 2 lines 24-50). This process is inherently applicable to performing a fragrancng application as evidenced by *Bourgeois et al. (DERWENT ABSTRACT)*.

The reference does not specifically disclose the claimed materials of instant Claim 5.

On the other hand, the genus indicates a trend of R1, R2, and R3, materials comprising linear or branched alkanes or alkenes from C1 to C18, including methyl ethyl, propyl, butyl, amyl {pentyl}, decyl, dodecyl, cyclohexyl, phenyl, tolyl, or benzyl; including N-methyl-N-phenyl ethyl carbamate (*col 3 line 26*) {taken as a demonstration allowing mixed variations of R1, R2, and R3 groups}; while X is indicated by the genus to comprise oxygen or only one other moiety.

Further, as the reference teaches a trend of linear materials starting from methyl, ethyl, propyl, decyl, dodecyl, octadecyl, the trend is taken to include linear R1-3 groups that would include C1 to C18 materials, this would also include C6, linear, or linear hexyl groups.

This would include the composition of Applicants' instant Claim 5 material that is identified as the chemical species; corresponding to the 14th entry from the top of Applicants' instant Claim 5; comprising ethyl, methyl, and hexyl R, R1 and R2 groups.

As the genus limits the moieties for X, R1, R2, and R3, the number of possible materials is finite. As the list is finite, and the readily identified materials comprising

methyl, ethyl and hexyl groups, it would be obvious to one of ordinary skill in the art to choose any of the successful materials comprised by the limiting and successful genus boundaries as a successful chemical material with a reasonable expectation of success. See MPEP § § 2131.02 and 2144.08 for more information on obviousness of species by a disclosure of a genus for the applications indicated by the reference.

The material would be expected to have inherent properties, including those identified by the Applicants. It is held that "Products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

29. **In addition:**

The Examiner recognizes that all of the claimed physical properties are not positively taught by the references provided below, namely a material's descriptive odor or fragrance note for all of the materials employed or taught. However, the reference renders all of the claimed ingredients, in the claimed amounts, process steps, and/or process conditions, and the reference discloses the composition disclosed or taught to be made in substantially the same way as Applicant's original specification or Claims. Therefore, the claimed physical properties would inherently be achieved by the composition as claimed and rendered obvious or anticipated. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Examiner's position that the

Application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and/or process conditions for all of the Claim-encompassed, compositional amounts claimed.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have chosen for adding to compositions, a chemical species, with inherent properties, within the genus and genus boundaries taught by *Karr Hunt et al.*; to obtain a carbamate with inherent properties with a reasonable expectation of success.

Claims 3, 5, 8, 10-11, 13, 15, 18-19 and 20 are rejected under 35 U.S.C. 103(a) as being obvious over *Finch et al.* (US Ap 2001/0036907) in view of *Karr Hunt et al.* (US 2,060,733) as evidenced by *Bourgeois et al.* (EP 0 591054).

Finch et al. (page 1 paragraph [0001]-[0011], [0016]-[0017]; page 1-2 paragraph [0018], page 2 paragraph [0019]-[0020], [0025], Abstract, page 5 paragraph [0073]-[0076]) employs esterified cellulose, rebuild material that improves fragrance retention on fabrics that are laundered; the materials are indicated to be preferred as functioning as fragrancing material for as long as possible.

The material is indicated to be placed into compositions (page 6 paragraphs [0080]-[0085]) and is indicated to be applicable to a wide range of fragrance materials (page 5 paragraph [0076]). As the compositions comprise fragrance materials (e.g., Examples 6-8, 9-16 pages 11-12), the carbamates are taken as being applied as a fragrance material ingredient; the fragrance being taken as a composition with a perfume or fragrance.

The reference is silent towards the employment of carbamate materials within the Claim 3, 5, 10, and for those of the Applicants' instant Claim 11 genus of materials comprised in the fragrancings compositions.

On the other hand, *Karr Hunt et al.* discloses a genus of carbamate materials {see Figure 1 above} that are indicated to prevent the UV deterioration of cellulose materials (*col 2-3 lines 33-50 and 1-6 respectively*). The carbamates is applied to fabric material in water (*pages 2-3 Examples 2-3*) and are indicated to be used in a process of adding the carbamate materials to cellulose materials (*page 3 claims 1-2*).

Karr Hunt et al. further discloses placement of the material, with inherent properties, into cellulose materials in order to prevent ultraviolet light {UV} degradation (*page 1 col 1 lines 44-49 and col 2 lines 24-50*). The process is inherently applicable to performing a fragrancings application as evidenced by *Bourgeois et al. (DERWENT ABSTRACT)*.

The agents taught are indicated as being effective for retarding degradation under any given set of conditions (*col 1 lines 30-34*).

The materials indicated by *Karr Hunt et al.* would include the composition of Applicants' instant Claim 5, and instant Claim 10 material that is identified as the chemical species; corresponding to the 14th entry from the top of Applicants' instant Claim 5 and Claim 10; comprising ethyl, methyl, and hexyl R, R1 and R2 groups.

Further as to Claim 11:

As the material genus of *Karr Hunt et al.*, indicate that R1-R3 comprise cyclohexyl and ethyl groups, the 1st composition with the cyclohexyl and ethyl moieties

in the genus's R1, and R2, R3 respectively when X is Oxygen. Further, as the reference discloses a method for adding carbamate material to a composition and as the reference's materials are members within the Claim 3 genus, it would be expected that the inherent fragrant properties of the materials provide for the property limitations indicated for Claims 3.

30. **In addition:**

The Examiner recognizes that all of the claimed physical properties are not positively taught by the references provided below, namely a material's descriptive odor or fragrance note for all of the materials employed or taught. However, the reference renders all of the claimed ingredients, in the claimed amounts, process steps, and/or process conditions, and the reference discloses the composition disclosed or taught to be made in substantially the same way as Applicant's original specification or Claims. Therefore, the claimed physical properties would inherently be achieved by the composition as claimed and rendered obvious or anticipated. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Examiner's position that the Application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and/or process conditions for all of the Claim-encompassed, compositional amounts claimed.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have added a cellulose preserving material for retarding UV damage under

any set of conditions, with inherent fragrance properties successfully employed with fabrics as taught by *Karr Hunt et al.*, as evidenced by *Bourgeois et al.*, to a fragrance retention enhancing compositions employed with cellulose materials in laundry applications, as taught by *Finch et al.*, that are also suggested by *Finch et al.* as being desired to provide fragrance material for as long as possible, with a reasonable expectation of success.

31. **Claims 3, 8 and 20** are rejected under 35 U.S.C. 103(a) as obvious over *Torii et al.* (US 3,966,903), in view of *Kaiser et al.* (US 4,260,526).

Torii et al. discloses compositions for hair waving comprising the following genus chemicals (Abstract) shown in Figure 1 below:



Figure 2. US 3,966,903 genus

32. In Figure 3, R_1 , R_2 , and R_3 are chosen from a group comprising, hydrogen, methyl, ethyl, and propyl groups. The Genus of *Torii* discloses that the R_1 , R_2 , R_3 moieties are to be methyl ethyl or propyl groups. As such, when all three are propyl, the claim is met in regard to the number of carbon atoms present.

The formulations are not are not indicated to have an unpleasant odor (Abstract) when adding this material (col 3 lines 32-45).

Torii et al. discloses that the formulations employed are not are not indicated to have an unpleasant odor (Abstract), and that carbamate material is employed in

applications that are provided with a proper quantity of fragrant material (column 6 examples) {taken as being made with as a fragrancing application}. When the carbamate material is combined with a perfume material, the carbamate is taken as being incorporated into a fragrance as a fragrance ingredient.

The reference discloses a genus with an insufficient number of carbons for at least some of the combinations of methyl, ethyl or propyl groups for materials in Claims 3, 8, 11, 13.

Per Claim 3:

On the other hand, when two of the R groups comprise ethyl groups and the third comprises a propyl group, or when two out of three R groups comprise propyl groups while the third group is an ethyl or a methyl, the materials identified conform to the requirements of instant Claim 3.

These genus attributes satisfy the instant Claim 3 genus and can be readily envisaged when R₁, R₂, and R₃ of the reference are each C₁-C₁₁ alkyl groups for the Claim 3 genus group a) for each R, R¹ and R² species comprise at least two propyl groups or at least one ethyl or methyl in combination with two propyl moieties.

It is taken that the materials are also added as fragrances or as fragrant materials without an unpleasant odor as the materials are within the genus of the Applicants. As Case law holds that a material and its properties are inseparable {In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990)}; it is taken that the materials are also added as fragrances or as fragrant materials without an unpleasant odor as the materials are within the genus of the Applicants.

Further as to Claim 3 and to Claim 8:

The chemicals are indicated to be combined with other materials including perfumes (*col 4 lines 46-52*). The compositions are indicated to be used for hair waving (*col 1 lines 65-68*) and this terminology is taken as indicating uses for hair, as a body care product; compositions are also indicated to be free from any unpleasant odor and this is taken to indicate that the compositions employing the genus chemicals are intended to be used because they enable a pleasant odor.

Further, no unpleasant odor is taken to include materials with an odor that is not unpleasant.

All chemicals in the genus of Figure 2 are indicated to possess no unpleasant odors (*col 3 lines 32-34*), while the composition of materials is not indicated to be odorless when provided as a fragrance ingredient in a perfumed composition.

In addition, the reference indicates that other chemicals employed as hair treatment materials, also not indicated as having odor, include gamma valerolactone (*col 3 line 28*); gamma-valerolactone would be expected to be known in the art by one of ordinary skill, as a fragrance (*per Kaiser et al. US 4,260,526*, Example G *col 14*); the valerolactone material is classified along with ethyl N,N-dimethylcarbamate {a material comprised within the Torii et al's genus} (*col 3 lines 25-26*); the synergistic combination of materials are also a material with no unpleasant odor (Torii et al. *col 3 lines 32-34*). IN this case, the term "no unpleasant odor" is taken as having an odor that is not unpleasant.

As it is known in the art, as taught by Kaiser, that fragrance chemicals are applicable to having no unpleasant odor, the combined references are taken as indicating that the materials of Torii are applicable to possessing fragrance properties.

Therefore, the material would be expected to have inherent properties, including those identified by the Applicants. It is held that "Products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

As the reference discloses a method for adding carbamate material to a composition; and as the reference's materials are members within the Claim 3 genus; it would be expected that the inherent fragrant properties of the materials provide for the property limitations indicated for Claims 3 and its dependent Claims 8.

Further as to Claim 20:

As Claims 3 and 8 are met, so too is Claim 20.

33. **In addition:**

The Examiner recognizes that all of the claimed physical properties are not positively taught by the references provided below, namely a material's descriptive odor or fragrance note for all of the materials employed or taught. However, the reference renders all of the claimed ingredients, in the claimed amounts, process steps, and/or process conditions, and the reference discloses the composition disclosed or taught to be made in substantially the same way as Applicant's original specification or Claims.

Therefore, the claimed physical properties would inherently be achieved by the composition as claimed and rendered obvious or anticipated. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Examiner's position that the Application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and/or process conditions for all of the Claim-encompassed, compositional amounts claimed.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the carbamate material taught by Torii et al., into a fragrance application with fragrance material, as a fragrance material ingredient, as taught by Torii et al., with a reasonable expectation of success.

Claims 11, 13 are rejected under 35 U.S.C. 103(a) as being obvious over *Torii et al.* (US 3966903).

Torii et al. discloses compositions for hair waving comprising the following genus chemicals (Abstract) shown in Figure 3 below:



Figure 3. US 3,966,903 genus>>

In Figure 3, R₁, R₂, and R₃ are chosen from a group comprising, methyl, ethyl, and propyl groups. These genus attributes satisfy the instant Claim 3 genus and can be

readily envisaged when R_1 , R_2 , and R_3 of the reference are each C_1 - C_{11} alkyl groups for the Claim 3 genus group a) for each R , R^1 and R^2 species.

The chemicals are indicated to be combined with other materials including perfumes (col 4 lines 46-52). The compositions are indicated to be used for hair waving (col 1 lines 65-68) and this terminology is taken as indicating uses for hair, as a body care product; compositions are also indicated to be free from any unpleasant odor and this is taken to indicate that the compositions employing the genus chemicals are intended to be used because they have a pleasant smell. {It should be noted that the reference does not indicate that the materials are free from odor.}

Further as to Claims 11, and 13:

The reference does not further disclose employing chemicals in the Claim 11 genus.

However, Claims 11, 13 are rejected under 35 U.S.C. 103 as being obvious in accord with MPEP 2144.09 regarding Homology and Isomerism which states:

"Compounds which are position isomers (compounds having the same radicals in physically different positions on the same nucleus) or homologs (compounds differing regularly by the successive addition of the same chemical group, e.g., by $-CH_2-$ groups) are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties".

When the reference's genus {discussed above} employs substituents where R_1 is propyl, and when R_2 and R_3 are ethyl, a homolog of a chemical in the Structure Table for Claim 11 is indicated. The Structure Table chemical being 2nd to the bottom of page 6 of 20 in instant Claim 11 where when one of the amine alkyl groups is butyl instead of propyl.

In the present case, as the reference indicates that other chemicals employed as hair treatment materials, that are mixed with other fragrances {e.g., gamma-valerolactone (col 3 line 28)}; the synergistic combination of materials the expected compositions would be applicable to mixing with fragrances to promote synergistic fragrance compositions.

Further, all chemicals in the genus of Figure 2 are indicated to possess no unpleasant odors (col 3 lines 32-34), while the materials are not indicated to be odorless.

The material would be expected to have inherent properties, including those identified by the Applicants. It is held that "Products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Further, the material with an additional methyl group would be expected, by one of ordinary skill in the art, to have a greater molecular weight and a corresponding reduction in vapor pressure.

In addition, as the claimed carbamate materials are not required to have an odor, only to be a fragrance ingredient, the reference meets the Claims.

34. **In addition:**

The Examiner recognizes that all of the claimed physical properties are not positively taught by the references provided below, namely a material's descriptive odor

or fragrance note for all of the materials employed or taught. However, the reference renders all of the claimed ingredients, in the claimed amounts, process steps, and/or process conditions, and the reference discloses the composition disclosed or taught to be made in substantially the same way as Applicant's original specification or Claims. Therefore, the claimed physical properties would inherently be achieved by the composition as claimed and rendered obvious or anticipated. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Examiner's position that the Application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and/or process conditions for all of the Claim-encompassed, compositional amounts claimed.

It would have been obvious at the time of the invention for one of ordinary skill in the art to have further employed any of the materials or a homolog of the successful chemicals demonstrated by *Torii et al.* and mixed them in compositions comprising perfumes that are indicated to be used for successful body care products that have an inherent odor that is not unpleasant, with a reasonable expectation of success.

Response to Arguments

35. Applicant's arguments filed 22 July 2011 have been fully considered but they are not persuasive.
- 36.
37. Applicant Argues {pp 9-11 of 23}:

38. That Karr Hunt does not teach or suggest the compositions with a method of manufacturing a fragrance application because Karr Hunt does not teaches a fragrance application because claim require an odor and that the Karr Hunt rejections employ non-analogous art.

39. In response, the argument is addressed in the rejections above.

40. In further response, in the present case, as the claimed fragrance and fragrancng application is not indicated to require any describable olfactory note, the chemicals applicable to those embodied in the instant Claims are not taken as being required to provide any particular olfactory note when employed.

41. In further response to applicant's argument that Karr Hunt is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Karr Hunt teaches the application of a material that is employed in fragrance application as addressed in the Karr Hunt rejections above.

42. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., required odor) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

43. The claimed invention does not further require ingredients to have an odor, only that the materials are provided as a fragrance ingredient. As such, claim limitations are taken to apply to the composition of the fragrance composition.

44.

45. Applicant Argues {pp 12 of 23}:

46. That hindsight is employed.

47. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

48. Applicant Argues {pp 13-15 of 23}:

49. That Finch does not teach incorporating carbamate perfume.

50. In response, the Claims do not require incorporating of a perfume, only a fragrance ingredient.

51.

52. Applicant Argues {pp 13-15 of 23}:

53. That motivation is lacking to combine Karr Hunt's cellulosic UV deterioration prevention material to laundry treatment compositions and that Finch and Karr Hunt are not combinable.

54. In response, this issue is addressed in the Finch Karr Hunt rejections applied above.

55. Applicant Argues {p 16 of 23}:

56. That Torii does not disclose materials with Claim 3 R group carbon atom count with 7-18 carbon atoms.

57. In response: The Genus of Torii discloses that the R₁, R₂, R₃ moieties are to be methyl ethyl or propyl groups. As such, when all three are propyl, the claim is met.

58.

59. Applicant Argues {pp 16-20 of 23}:

60. That no unpleasant odor means no odor and provide no fragrancng benefit; as such, Torii does not incorporate a carbamate into a fragrance application as a fragrance ingredient.

61. In response, Claim limitations do not require a fragrancng benefit, only that a fragrance ingredient be applied to a composition with a fragrance application. As (Torii) compositions provide for a fragrance benefit (e.g., examples of col 6), the reference meets the applicable claims.

62.

63. Applicant Argues {pp 20-21 of 23}:

64. That the Kaiser reference is not permissible and does not provide for claimed limitations.

65. In response, Kaiser is employed to present terminology applicable to perfume materials demonstrated in the art. The perfume ingredient addressed in Kaiser is referred to as not having an unpleasant odor (Torii et al. col 3 lines 25-26 and 32-34). As such, the Kaiser reference is taken as indicating that a material not having an unpleasant does not require the material have no odor.

66. Gamma-valerolactone would be expected to be known in the art by one of ordinary skill, as a fragrance (per *Kaiser et al. US 4,260,526*, Example G col 14, contributing to an apricot odor); the valerolactone material is classified along with ethyl N,N-dimethylcarbamate {a material comprised within the Torii et al.'s genus} (col 3 lines 25-26); the synergistic combination of materials are also a material with no unpleasant odor (Torii et al. col 3 lines 32-34). In this case, the term "no unpleasant odor" is taken as having an odor that is not unpleasant.

67.

68. Applicant Argues {pp 21-22 of 23}:

69. That homologs would not be expected to be applicable to material odor of instantly claimed invention material.

70. In response, as the carbamate materials are not required to possess an odor, the

71. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., required odor) are not recited in the rejected claim(s). Although the claims are

interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

72. The claimed invention does not further require ingredients to have an odor, only that the materials are provided as a fragrance ingredient. As such, claim limitations are taken to apply to the composition of the fragrance composition.

73. Applicant further Argues {pp 22-23 of 23}:

74. That Torii does not provide for teaching or suggesting manufacturing a fragrance application comprising the incorporation into the fragrance applications as a fragrance ingredient a tertiary nonvinyl carbamate wherein the fragrance ingredient is a fragrance.

In response, to the presence of a fragrance ingredient, it would be expected that the inherent fragrant properties of the materials provide for the property limitations indicated for Claims 3, 5, 10, 11; it is held that "Products of identical chemical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

75. **In addition:**

The Examiner recognizes that all of the claimed physical properties are not positively taught by the references provided below, namely a material's descriptive odor or fragrance note for all of the materials employed or taught. However, the reference

renders all of the claimed ingredients, in the claimed amounts, process steps, and/or process conditions, and the reference discloses the composition disclosed or taught to be made in substantially the same way as Applicant's original specification or Claims. Therefore, the claimed physical properties would inherently be achieved by the composition as claimed and rendered obvious or anticipated. If it is the Applicant's position that this would not be the case: (1) evidence would need to be presented to support Applicant's position; and (2) it would be the Examiner's position that the Application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties with only the claimed ingredients, process steps, and/or process conditions for all of the Claim-encompassed, compositional amounts claimed.

The rejections are held.

Examiner Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON GRESO whose telephone number is (571)270-7337. The examiner can normally be reached on M-F 0730-1700.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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